

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

Tiffany Smith,

Plaintiff,

vs.

CASE NO.

8:12cv330

COMPLAINT

JURY DEMAND

City of Omaha, Omaha Police Department,

Alex Hayes, Chief of Police,

Individually and in his official capacity,

Omaha Police Officer, Benjamin Edwards,

Individually and in his official capacity,

Omaha Police Officer , Aaren Anderson,

Individually and in his official capacity,

Omaha Police Officer, Jerald Swanson,

Individually and in his official capacity,

Douglas County Attorney, Don Kleine

Individually and in his official capacity,

Douglas County Attorney, John Doe,

Individually and in his official capacity,

City of Omaha, a political

subdivision existing

and organized in the State of Nebraska,

Douglas County, a political

subdivision existing

and organized in the State of Nebraska,

John Does 1-100,

Defendants.

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA
12 SEP 18 PM 12:51
CLERK OF U.S. COURT

COMPLAINT

1. Comes now Tiffany Smith and files this complaint against the named defendants

City of Omaha, Omaha Police Department, Alex Hayes, Chief of Police,

individually and in his official capacity, Omaha Police Officer, Benjamin

Edwards, individually and in his official capacity, Omaha Police Officer , Aaren

Anderson, individually and in his official capacity, Omaha Police Officer, Jerald

Swanson, individually and in his official capacity, Douglas County Attorney, Don

Kleine, individually and in his official capacity, Douglas County Attorney, John Doe, individually and in his official capacity, City of Omaha, a political subdivision existing and organized in the State of Nebraska, and Douglas County, a political subdivision existing and organized in the State of Nebraska.

2. This action is brought for damages for assault and battery, false arrest and malicious prosecution and damages under 42 USC § 1983 for violation of the Plaintiffs Federal Civil Rights by the Defendants whose actions were taken under color of state law pursuant to Neb. Rev. Stat. § 25-219. This action arises under the Constitution and laws of the United States, particularly the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States and the State of Nebraska, the Civil Rights Act, Title 42 U.S.C. Section 1981, 1983, 1985, 1986, and 1988. Jurisdiction is conferred upon this court by Neb. Rev. Stat. § 25-219, 28 USC §1331 and 28 USC §1343(a) (3). Venue of this action is proper under 28 USC §1391(b).
3. The jurisdiction of this Court is invoked for plaintiff's causes of action under the provisions of 28 U.S.C. Sections 1331 and 1343, which confer original jurisdiction on Federal District Courts to sit and redress the deprivation under color of statute, ordinance, regulation, custom, or usage of rights, privileges, and immunities secured to the plaintiff by the Fourteenth Amendment to the Constitution of the United States; including the right to due process and equal protection of the law. Plaintiff has complied with the Political Claims Tort Act Neb. Rev. Stat. § 13-901.

4. Plaintiff invokes the supplemental jurisdiction of this court to decide plaintiff's state law claims and state law claims of malicious prosecution, false arrest, abuse of process, false imprisonment and conspiracy under the doctrine of pendent jurisdiction.
5. At all times relevant to this complaint, Defendants acted under color and pretense of the law to wit; under color of statute, ordinance, regulation, custom, or usage of the State of Nebraska
6. At all times relevant to this complaint, Defendants engaged in illegal conduct herein mentioned to the injury of the plaintiff and deprived her of her rights, privileges and immunities secured to her by the Fourteenth Amendment to the Constitution of the United States and the State of Nebraska.
7. Some of the activities complained of in this complaint were based on a racial discriminatory practice, policy, agenda, whereby black individuals are charged with crimes in violation of their constitutional rights.
8. Plaintiff, Tiffany Smith, is and was a resident of Omaha, Douglas County, Nebraska. Defendants Omaha Police Department Officers B. Edwards, A. Anderson and S. Swanson are residents of Omaha, Nebraska, and are employed as police officers by the Defendants Omaha Police Department. Defendant Chief Alex Hayes, is a resident of Omaha, Douglas County, Nebraska. Defendants Douglas County Attorney, Don Kleine and Shawn Hagerty, are residents of Douglas County, Nebraska. John Doe is believed to be a resident of Douglas County, Nebraska.
9. Defendant City of Omaha was at all times mentioned in this complaint, and still

is, a political subdivision of the State of Nebraska, organized and existing under and by virtue of the laws of the State of Nebraska. The Omaha Police Department is an entity of the City of Omaha. Defendant County of Douglas was at all times mentioned in this complaint, and still is, a political subdivision of the State of Nebraska, organized and existing under and by virtue of the laws of the State of Nebraska. The Omaha Police Department is a law enforcement agency organized under the laws of the City of Omaha.

10. Defendant Alex Hayes was at all times here alleged a peace officer of the City of Omaha, Nebraska specifically the Chief of Police.
11. Don Kleine, Shawn Hagerty and John Doe was at all times here alleged prosecuting attorneys for Douglas County, Nebraska.

FACTS

12. On September 28, 2010 , at about 17:40 plaintiff was at home in the City of Omaha, when defendant Omaha Police Officers appeared, and without having any warrant charging any offense against the laws of the State of Nebraska, or the City of Omaha, arrested plaintiff, and advised Plaintiff that defendant Omaha Police Department and the City of Omaha arrested Plaintiff for a violation of a crime. The defendants Omaha Police Department Officers arrested Plaintiff without serving any warrant on plaintiff charging her with any violation of any law, statute, or ordinance and handcuffed Plaintiff in the back of the Omaha Police Department vehicle in the City of Omaha.

13. The charges were dismissed in Omaha, Douglas County, Nebraska.

FIRST CAUSE OF ACTION
COUNT I-FALSE ARREST

14. Plaintiff re-alleges all previous paragraphs and incorporates them by this reference as if fully set forth herein and further alleges:

15. In arresting the Plaintiff, OPD Defendants B. Edwards, A. Anderson and Swanson and all Defendants committed assault and battery, false arrest and malicious prosecution of the Plaintiff with the intent to inflict unnecessary harm upon the Plaintiff and such use of force caused physical and mental injuries to the Plaintiff.

16. Plaintiff alleges that her arrest and prosecution by Defendants was in violation of her right under the Fourth Amendment of the United States Constitution to be free from unreasonable arrest and her right under the Fourteenth Amendment of the United States Constitution to due process of law. Plaintiff's arrest was made under color of the authority of Defendants as police officers for the City of Omaha and the Omaha Police Department and all the Defendants. Plaintiff's prosecution was made under color of the authority of the Douglas County Attorney and the City of Omaha and the Omaha Police Department and all the Defendants. Plaintiff alleges that her arrest by Douglas County and the City of Omaha was unlawful.

17. Plaintiff further alleges that the violation of her constitutional rights were caused by implementation of a custom, policy, or official act of Defendants as a custom of the officers false arrest, malicious prosecution and assault and battery toward

Plaintiff and other black citizens, a failure to properly train the officers and a failure to properly supervise the officers.

18. The Douglas County Attorney directed the Plaintiff's prosecution and the Douglas County Attorney dismissed all charges. The above action was commenced without probable cause and dismissed. By reason of the action commenced by Defendants Plaintiff was forced to incur reasonable and necessary attorney fees in excess of the amount of \$750.00.

SECOND CAUSE OF ACTION
COUNT II MALICIOUS PROSECUTION

19. Plaintiff re-alleges all previous paragraphs and incorporates them by this reference as if fully set forth herein and further alleges:
20. Defendants prosecuted Plaintiff for obstruction.
21. Defendants arrested Plaintiff.
22. Defendants dismissed the case against Plaintiff.
23. Defendants did not have probable cause to arrest Plaintiff
24. Plaintiff suffered damage as a result of the arrest.

THIRD CAUSE OF ACTION
COUNT III ABUSE OF PROCESS

25. Plaintiff re-alleges all previous paragraphs and incorporates them by reference as if fully set forth herein and further alleges:
26. Defendants exhibited an ulterior purpose in arresting plaintiff resulting in dismissal of all charges.

FOURTH CAUSE OF ACTION
COUNT IV CONSPIRACY

27. Plaintiff re-alleges all previous paragraphs and incorporates them by reference as if fully set forth herein and further alleges:
28. Defendants conspired to arrest, harass and detain Plaintiff in the prosecution of this case.
29. Plaintiff has complied with the Political Tort Claim Act notice requirement Neb. Rev. stat. § 13-901.

FIFTH CAUSE OF ACTION
COUNT V FALSE ARREST

30. Plaintiff re-alleges all previous paragraphs and incorporates them by reference as if fully set forth herein and further alleges:
31. Defendants falsely arrested Plaintiff on September 28, 2012.
32. Defendants altered, withheld, changed and manipulated evidence to falsely arrest Plaintiff.

DAMAGES

33. Plaintiff re-alleges all previous paragraphs and incorporates them by reference as if fully set forth herein and further alleges:
34. Plaintiff was unlawfully arrested.
35. Plaintiff has suffered compensatory damages in excess of the amount of

\$75,000.00 and \$0 in lost wages and in the amount of \$1,500.00 in additional out-of-pocket expenses, including medical expenses, incurred as a result of her arrest.

36. Wherefore, as a consequence of the false arrest, assault and battery and malicious prosecution and violation of Plaintiff's Federal Civil Rights pursuant to 42 USC §1983, and a violation of her constitutional rights Plaintiff seeks judgment against defendants, and each of them, for:

37. Compensatory damages in the amount of \$100,000.00;

38. Punitive damages as allowed by law;

39. Attorney fees;

40. Costs of this suit;

41. The defendant requests a jury trial; and

42. and such other and further relief as the Court deems just and proper.

Dated this 18th day of September, 2012.

Respectfully,

Tiffany Smith, Plaintiff

By: 

Timothy L. Ashford, # 19687

Attorney at Law

300 South 19th Street, Suite 316

Omaha, Nebraska 68102

(402) 342-8888

Attorney for Plaintiff